

REMARKS

Claims 1-16 are pending in this application. By this amendment, applicants have canceled claims 1-9, 12, 13 and 14 without prejudice, amended claims 10, and 11, and added new claims 17-26. Applicants respectfully request entry of the amendments. Upon entry, claims 10, 11, and 15-26 will be pending in the subject application.

Support for Amendments

Support for the amendments to the original claims and for the new claims can be found throughout the application. For example, applicants note the following portions of the specification as support for the amendments to the claims shown above:

Claim 10: page 5, lines 27-28;

Claim 11: Original claim 11;

Claim 17: page 13, Example;

Claim 18: Example, pages 14-15;

Claim 19: page 5, line 32-33;

Claim 21: page 15, line 15, Table;

Claim 22: page 15, line 15, Table; Example, pages 14-15;

Claim 23: page 15, line 15, Table; Example, pages 14-15;

Claim 24: page 16, lines 1-19;

Claim 25: page 16, lines 1-19; Example, pages 14-15;

Claim 26: page 16, lines 1-19; Example, pages 14-15.

Rejection Under 35 U.S.C. 102(e)

Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 1-16 under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent No. 6,444,195 (Cole et al.). The examiner contends that Cole discloses a method of photostabilizing a composition comprising one or more dibenzoylmethane derivatives such as avobenzene or Parsol 1789. The examiner asserts that in Col. 3, Cole discloses that the derivative is apparently present in an amount of about 0.1% to about 20% by weight of the composition. The examiner further asserts that Cole also discloses a method of protecting mammalian skin or hair from UV radiation comprising topically applying to the skin or hair such a composition. The examiner also asserts that at Col. 4, lines 38-65 Cole also discloses that absorbing/reflecting agents such as phenylbenzimidazole sulfonic acid and zinc oxide are also present in concentrations from about 0.1% to about 30% by weight of the composition. The examiner has taken the position that although Cole does not specifically identify phenylbenzimidazole sulfonic acid as a stabilizer, the presence of the same amounts and proportion claimed by applicants are allegedly sufficient to act as a stabilizer without it being significantly stated by the reference. The examiner notes that applicants are claiming a composition and that statements of intended use are not of patentable distinction and carry no weight. Finally, the examiner asserts that at Col. 6, lines 1-10, Cole allegedly discloses that the composition may be in many forms, specifically an emulsion. The Examiner therefore concludes that Cole allegedly discloses each and every aspect of the invention as claimed by applicant in the instant case.

In response, but without conceding the correctness of the examiner's position, applicants have amended the claims and added new claims to further clarify the

invention. Applicants make these amendments in an earnest effort to move this application to allowance, and without prejudice to their right to pursue the canceled subject matter in a later application. Applicants maintain that Cole does not anticipate the claimed invention under 35 U.S.C. 102, nor render the claimed invention obvious under 35 U.S.C. 103. Cole does not disclose nor suggest that avobenzone is destabilized as a sunscreen agent in the presence of higher levels of zinc oxide, as disclosed in the subject specification, and further that that destabilization can be corrected by the addition of an appropriate amount of phenylbenzimidazole sulfonic acid (PBSA). Cole's teaching is directed to an entirely different method of photostabilizing dibenzoylmethane derivatives by addition of diester or polyesters of a naphthalene dicarboxylic acid and a benzophenone derivative and subjecting it to high doses of sunlight or simulated sunlight. Cole only mentions zinc oxide and PBSA as examples of numerous additional "absorbing/reflecting agents" (See Cole, Col. 4, lines 38-52). Nowhere does Cole teach or suggest the problem and solution provided in the claimed invention. Cole does not teach that higher levels of zinc oxide can cause photoinstability of avobenzone. In fact, Cole teaches the opposite by encouraging the addition of zinc oxide as one of the numerous "absorbing/reflecting agents." Moreover, the Cole patent teaches against what the inventors here claim, because the stability enhancers in Cole are oil-soluble ingredients, whereas the PBSA of the present invention is a water-soluble ingredient. Because avobenzone is an oil-soluble ingredient, one of ordinary skill in the art would not have been led to use a water-soluble ingredient such as PBSA to achieve photostability of avobenzone in the presence of higher levels of zinc oxide.

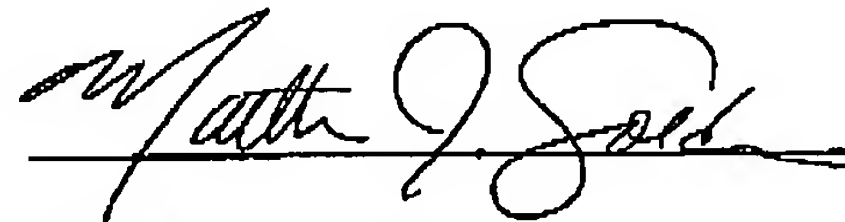
Therefore, applicants maintain that the teachings of the cited reference does not anticipate the claimed invention, nor would it render the claimed invention

obvious, and thus respectfully request that the rejection pursuant to 35 U.S.C. 102(e) be withdrawn.

CONCLUSION

In summary, applicants maintain that the subject application is now in condition for allowance and a Notice of Allowance is therefore respectfully requested. If the undersigned can be of assistance in advancing the application to allowance, please contact the undersigned at the number set forth below.

Respectfully submitted,



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